



Standards Commission Decision

Report by Alan Turpie, Legal and Governance Manager/Monitoring Officer

Report for Decision

1 Recommendations

It is recommended that the Council considers the decision of the Standards Commission in relation to complaint reference LA/Mi/3803.

2 Purpose of Report/Executive Summary

In terms of Section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and Rule 10.9 of the Standards Commission Hearing Rules, the Council requires to consider, within three months, the terms of a written decision issued by the Standards Commission for Scotland.

Date Tuesday 26 September 2023

Report Contact:

Alan Turpie, Legal and Governance Manager/Monitoring Officer

Alan.Turpie@midlothian.gov.uk

3 Background/Main Body of Report

- 3.1 The Standards Commission in Scotland encourages high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and those appointed to the Boards of Devolved Public Bodies.
- 3.2 It is a statutory body established under The Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the Ethical Standards Act”). The Ethical Standards Act created a framework whereby Councillors and Members of Devolved Public Bodies are required to comply with Codes of Conduct and also with Guidance which is issued by the Standards Commission.
- 3.3 Complaints about breaches of these Codes are investigated by the Commissioner for Ethical Standards in Public Life in Scotland (“ESC”) and thereafter adjudicated upon by the Standards Commission.
- 3.4 Following an investigation into a complaint received on 22 September 2022 about the conduct of Councillor Bryan Pottinger (the Respondent), the Ethical Standards Commissioner (ESC) referred a report to the Standards Commission on 2 June 2023, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).
- 3.5 The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 3.1 and 3.3, which are as follows:
- Respect and Courtesy
 - I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media
 - I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.
- 3.6 A hearing of the Standards Commission took place on 23 August 2023 held at Midlothian House, Dalkeith in relation to this complaint reference LA/Mi/3803.
- 3.7 The Hearing Panel considered the submissions made both in writing and orally at the Hearing and considered that it was unable to choose between the Complainer’s and Respondent’s versions of events.

It was unable to conclude, on balance, that it was more likely than not that the Respondent had made the comment as alleged. The Panel therefore was unable to conclude overall and on the balance of probabilities that the Respondent had breached the Code.

3.8 The Decision of the Hearing Panel is attached as Appendix B to this report.

4 Report Implications (Resource, Digital and Risk)

4.1 Resource

N/A

4.2 Digital

N/A

4.3 Risk

The Council has a statutory duty in terms of section 18 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 to consider the terms of the Commission's findings within three months. Failure to do so would not only be a breach of the Act but could also be considered to be in breach of the Key Principles of the Code of Conduct.

4.4 Ensuring Equalities (if required a separate IIA must be completed)

N/A

4.5 Additional Report Implications (See Appendix A)

See Appendix A

Appendices

Appendix A – Additional Report Implications

Appendix B – Background information/Links

APPENDIX A – Report Implications

A.1 Key Priorities within the Single Midlothian Plan

N/A

A.2 Key Drivers for Change

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

A.4 Delivering Best Value

N/A

A.5 Involving Communities and Other Stakeholders

N/A

A.6 Impact on Performance and Outcomes

N/A

A.7 Adopting a Preventative Approach

N/A

A.8 Supporting Sustainable Development

N/A

APPENDIX B

Background Papers/Resource Links

Standards Commission Website: [Cases - Forthcoming Hearings and Hearing Decisions | The Standards Commission for Scotland \(standardscommissionscotland.org.uk\)](https://standardscommissionscotland.org.uk/cases-forthcoming-hearings-and-hearing-decisions)